

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Sandwich Isles Communications, Inc.)	WC Docket No. 09-133
Petition for Declaratory Ruling)	

OPPOSITION TO SANDWICH ISLES INC. MOTION FOR DISCOVERY

On December 16, 2010, Sandwich Isles Communications Inc. (“SIC”) filed a motion for discovery in the above-captioned matter.¹ In its motion, SIC asks that the Bureau order NECA to provide “counsel to SIC” with access to virtually every rule, regulation, guidance and precedent in NECA’s possession.² National Exchange Carrier Association, Inc. (“NECA”) opposes the grant of this motion for four reasons.

First, the sheer magnitude of this request is overbroad and burdensome given the limited nature of the issue raised in this proceeding: whether the leased cable costs should be included in NECA pools. SIC’s litigation-style document request is not limited to the issue it raised in this proceeding.

Second, SIC does not need discovery. SIC has access to any accounting guidelines that NECA relies on in the administration of pools and access charge tariffing and pricing. There is absolutely no reason for the FCC to grant SIC’s counsel access to documents that SIC itself already can obtain without discovery. SIC’s counsel basically admits that SIC itself has had

¹ Sandwich Isles Communications Inc., Motion Emergency Motion Requesting Access to NECA Rules, Regulations, Guidance and Precedent of Any Type Relied Upon by NECA, Carriers or Regulatory Personnel in Connection with the Access Charge Regime, WC Docket No. 09-133 (filed Dec. 16, 2010)(“SIC Motion”).

² *Id.* at 1.

access to NECA guidelines both before and throughout this proceeding. SIC cannot hide behind its own implied ignorance of the law in support of its counsel's asserted need for more information. What is more, there is no reason to provide access to SIC or its counsel any additional documents since the FCC itself has already ruled on this matter based on public law, and the FCC decision takes precedence over any internal guidance or documentation in NECA's possession.³ SIC has consequently failed to demonstrate the potential relevance of any new documents it might discover during its requested fishing expedition.

Third, it is simply too late in this proceeding to order discovery since any information should have been obtained and relied on when the Declaratory Ruling was first filed back in June 2009, or shortly thereafter.⁴ It would be entirely inappropriate for the Commission to now grant the petitioner the right to engage in discovery. There is absolutely no precedent to allow a party on appeal or reconsideration of a Commission decision to engage in far-reaching discovery to aid in searching for yet another theory of the case.⁵

Fourth, the Commission almost never allows a private party to engage in discovery in the context of a declaratory ruling proceeding.⁶ And there is good reason. The purpose of a

³ *Sandwich Isles Communications, Inc., Petition for Declaratory Ruling*, Declaratory Ruling, WC Docket No. 09-133, DA 10-1880 (Com. Car. Bur., rel. Sept. 29, 2010)(“*Declaratory Ruling*”).

⁴ And even if discovery is allowed, any evidence discovered should be excluded anyway. 47 C.F.R. § 1.106(l).

⁵ *Sandwich Isles Communications, Inc., Petition for Reconsideration*, WC Docket No. 09-133 (filed Oct. 29, 2010)(“*SIC Petition*”).

⁶ The case cited by SIC to support its contention that the Commission allows discovery in declaratory ruling actions, *Nova Cellular West*, Order (DA 00-1835), File No. ENF-00-002 (Aug. 11, 2000), is not on point. That case involved a lawsuit between the parties referred by a court on the doctrine of primary jurisdiction that involved disputed facts, and which could have been initiated by complaint. Since there are no disputed facts in this case and the real issue is the FCC evaluation of the appropriate legal standard to be applied in this case, that

declaratory ruling petition is to analyze a set of facts (the basic facts have been agreed on in this case), and indicate what law should apply to those facts. Additional internal guidance provided by NECA adds nothing to the question of what law should apply to the facts of this case. The question in this case is whether the Commission properly included only a portion of the leased cable costs in NECA pools, the determination of which rests on FCC rules and regulations. Nothing in NECA's possession will help SIC address this point.⁷

For the foregoing reasons, NECA believes SIC's discovery motion should be dismissed.

Respectfully submitted,

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precedent is inapplicable. Discovery is more appropriate in a complaint case involving disputed facts. *See* 47 C.F.R. § 1.729.

⁷ Even if SIC could prove that NECA were inconsistently applying its accounting guidelines, this would be irrelevant since the FCC can overrule any asserted "rule" issued by NECA. Notwithstanding, NECA accounting guidelines are not "rules", but rather are guidelines used in the administration of FCC rules and regulations. In addition, NECA's application of the used and useful doctrine derives from the public law, which is equally accessible to SIC and its counsel.

Certificate of Service

I, Gregory J. Vogt, do hereby certify that I have on this 21st day of December 2010 caused a copy of the foregoing "Opposition to Sandwich Isles Inc. Motion for Discovery" to be served by electronic and first class mail upon the following:

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